IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.58 OF 2007

Pandit Prasad Balkrishna Joshi alias
Nandu Maharaj ...Petitioner.

Vs.

The State of Maharashtra
and 2 Ors. ...Respondents.

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Mr.Chandjeet Chandupal, Advocate for the Petitioner.
Mr.M.S.Mhambrey, APP, for the State-Respondent No.1.

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**CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.**

DATED : JANUARY 25, 2007.

P.C.:-

1. Heard Mr.Chandupal the learned counsel for the petitioner and Mr.Mhambrey the learned APP for the State-respondent 1.

2. The petitioner is a priest in the Samadhi Temple at Ganeshpuri. It appears that on a complaint filed by the second respondent in the Court of Judicial Magistrate First Class, Bhiwandi alleging offences punishable under Sections 384, 417, 418, 420 read with 34 read with 120(B) of IPC and under Section 63 of the Copyright Act, the learned

Magistrate passed an order under Section 156(3) of Code of Criminal Procedure on 12th August, 2005. The petitioner is arrayed as accused No.1 in the said complaint. The petitioner therefore has approached this Court. He has *inter alia* sought quashing of the said criminal complaint and all proceedings pending before the learned Judicial Magistrate First Class at Bhiwandi.

3. We have heard the learned counsel for the petitioner at some length. He submitted that even if the allegations made in the instant complaint are taken at their face value, they do not *prima facie* disclose any offence at all. He submitted that the complaint is frivolous, malafide and illegal and therefore deserves to be quashed by this Court. The basic submission of the learned counsel for the petitioner is that there cannot be any infringement against any public right of expression of devotion in the nature of an "aarti/bhajan" which is publicly recognised and the mere reproduction of the same being an un-substantial reproduction cannot be infringement and any action of infringement or related cognizance thereof under Copyright Law read

with penal law, would be unconstitutional. He further submitted that there cannot be any infringement of a minor reproduction of any work. He submitted that this position is well settled by a catena of Supreme Court judgments.

4. Mr.Mhambrey the learned APP for the State pointed out that the investigation of the case is complete and the charge-sheet has already been filed.

5. The learned counsel for the petitioner states that in that event the petitioner will approach the learned Magistrate with an appropriate application as provided in law. In view of this statement we direct that if such an application is made the learned Magistrate shall deal with it in accordance with law after hearing both sides. We make it clear that on the questions of law raised in this Petition or on any other aspect of the matter, we have not expressed any opinion. The learned Magistrate shall deal with all the questions independently. All questions on merits are left open.

6. The learned counsel for the petitioner states

that since the petitioner is a priest, it may not be possible for him to attend the trial Court on all occasions. Therefore, he may be exempted from appearance on the condition that he undertakes *inter alia* to remain present as and when the learned Magistrate requires. If such an application is made the learned Magistrate shall consider it sympathetically and in accordance with law.

7. Writ Petition is disposed of in aforestated terms.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]